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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75–227

FEDERAL POWER COMMISSION, *Petitioner*

v.

CONSUMER FEDERATION OF AMERICA, *et al.*

MEMORANDUM OF ASSOCIATED GAS DISTRIBUTORS IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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September 16, 1975

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ASSOCIATED GAS DISTRIBUTORS

Atlanta Gas Light Company

Bay State Gas Company, The Berkshire Gas Company, Boston Gas Company, Bristol and Warren Gas Company, Cape Cod Gas Company, City of Holyoke, Massachusetts, Gas and Electric Department, City of Westfield Gas and Electric Light Department, Commonwealth Gas Company, Connecticut Natural Gas Corporation, The Connecticut Gas Company, Connecticut Natural Gas Corporation, Fall River Gas Company, Fitchburg Gas and Electric Light Company, Gas Service, Inc., The Hartford Electric Light Company, Haverhill Gas Company, Lawrence Gas Company, Lowell Gas Company, Manchester Gas Company, New Bedford Gas and Edison Light Company, North Attleboro Gas Company, Northern Utilities, Inc., The Peoples Gas Company, Providence Gas Company, South County Gas Company, Southern Connecticut Gas Company, Tiverton Gas Company and Valley Gas Company (jointly)

The Brooklyn Union Gas Company

Central Hudson Gas and Electric Corporation

Consolidated Edison Company of New York, Inc.

Elizabethtown Gas Company

Long Island Lighting Company

New Jersey Natural Gas Company

New York State Electric & Gas Corporation

North Carolina Natural Gas Corporation

Philadelphia Electric Company

Philadelphia Gas Works

Piedmont Natural Gas Company, Inc.

Public Service Company of North Carolina, Inc.

Public Service Electric and Gas Company

Rochester Gas and Electric Corporation

UGI Corporation

Washington Gas Light Company

TABLE OF CONTENTS

Page

STATEMENT OF THE CASE 2

Emergency Measures Are Needed To Prevent Curtailments To Highest Priority Customers This Winter 2

The 180-Day Emergency Sales Procedure Would Provide Urgently Needed Supplies 4

CONCLUSION 5

TABLE OF CITATIONS

Page

CASES:

Mobil Oil Corp. v. *Federal Power Commission*, 417 U. S. 283 (1974) 2

FEDERAL POWER COMMISSION PROCEEDINGS:

Columbia Gas Development Corp., 51 FPC ____, Opinion No. 705 (1974) 2

Order To Show Cause, Finding An Emergency on the System of Tennessee Gas Pipeline Company, Docket No. CI75–466 (February 7, 1975) 3

Order Finding An Emergency on Transco System, Docket No. RP72–99 (November 12, 1974) 3

Transcontinental Gas Pipeline Corporation, 1975-1976 Winter Season, Presiding Administrative Law Judge's First Status Report, Docket No. RP72–99 (August 8, 1975) 3

MISCELLANEOUS:

Statement of John N. Nassikas, Chairman, Federal Power Commission, *Hearings Before the Subcommittee on Oversight and Investigation of the House Committee on Interstate and Foreign Commerce*, 94th Cong., 1st Sess. (July 14, 1975) . . . 5

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The Associated Gas Distributors group (AGD), a party below, submits this response in support of the Government's Petition for a Writ of Certiorari filed by the Solicitor General, on behalf of the Federal Power Commission. AGD concurs with the reasons set forth in the Government's Petition that the Court of Appeals decision incorrectly restricts the Federal Power Commission's authority to permit pipelines experiencing system shortages to make emergency purchases of natural gas for a 180-day period without Commission certification under Section 7(c) of the Natural Gas Act, 15 U.S.C. 717f(c). The purpose of this Memorandum is to underscore the critical need for short-term emergency purchases of the type that had been authorized by the Commission under its Order 491.

STATEMENT OF THE CASE

AGD is an unincorporated association of 45 natural gas distribution companies, the members of which are listed on the inside front cover of this Memorandum. These companies provide gas utility service to approximately 11 million consumers in most of the major market centers in the eastern portion of the United States. As utilities, the AGD companies bear the legal responsibility of maintaining adequate natural gas service to these customers at reasonable rates. These companies obtain substantially all of their natural gas supplies for this service from several major interstate pipeline companies. Most of AGD's pipeline suppliers are projecting massive levels of curtailment this coming winter which will have a serious adverse impact on both the AGD companies and the consumers they serve. The extent of the anticipated curtailments, and the need for the 180-day emergency sales to ameliorate the impact of such curtailments, is discussed below.

1. Emergency Measures Are Needed To Prevent Curtailments To Highest Priority Customers This Winter.

The natural gas shortage which this Court characterized as "serious and growing"[1] one year ago, has "now reached devastating proportions"[2] according to the Federal Power Commission. On June 6, 1975, the FPC released a staff report showing actual net curtailments of firm service by interstate pipelines totaling 2,013 billion cubic feet (Bcf) during the 12 months April 1974–March 1975. This was a 69 percent increase in curtailments in just one year. Curtailments for the coming

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[1] Mobil Oil Corp. v. Federal Power Commission, 417 U. S. 283, 320 (1974).

[2] Columbia Gas Development Corp., 51 FPC ____, Opinion No. 705, mimeo ed. 4 (September 11, 1974).

year ending March 1976 are projected to be 2,917 Bcf. The increase in curtailments during the critical winter period has been even more severe. The FPC report stated that during the most recent winter heating season, November 1974 through March 1975, actual net curtailments by 27 major interstate pipelines totalled 1,019 Bcf - a 130 percent increase over the previous winter. For the coming winter heating season, net curtailments of firm service are projected at 1,327 Bcf, nearly three times greater than the 1973-74 winter.

Curtailment of deliveries by pipelines serving the AGD service area in the eastern portion of the United States have been particularly severe. In the past year, the Commission found that emergencies existed on the systems of the Transcontinental Gas Pipeline Corporation (Transco) and the Tennessee Gas Pipeline Company (Tennessee) –two of the largest pipelines serving the AGD companies.[3] In a status report recently submitted to the Federal Power Commission on August 8, 1975, the situation on the Transco System for the upcoming winter season was described by the Administrative Law Judge as a "disaster area."[4] Curtailments by Transco and other eastern pipelines may well cause many industrial users to lose all or a significant portion of their winter period natural gas supplies. This will cause a substantial decrease in several types of manufacturing activity, with the closing of many plants a serious possibility. These cutbacks will reduce production of many vital goods and cause additional unemployment.

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[3] *See, e.g.*, Order Finding an Emergency on Transco System, FPC Docket No. RP72-99, mimeo ed. 8 (November 12, 1974); the Commission declared that an emergency existed on the Tennessee system in an Order issued in Docket No. CI75-466, mimeo ed. 3 (February 7, 1975).

[4] Transcontinental Gas Pipeline Corporation 1975-1976 Winter Season, Presiding Administrative Law Judge's First Status Report. Docket No. RP72-99, mimeo ed. 1. Transco's curtailment is expected to rise sharply to approximately 43 percent of firm requirements this winter, a percentage which–in terms of the Commission's Order No. 467(b) priorities–would completely eliminate service to priorities 2-9 and even cut six percent into the highest priority 1.

2. The 180-Day Emergency Sales Procedure Would Provide Urgently Needed Supplies

The 180-day emergency sales procedure is a mechanism whereby substantial increases in interstate gas supplies could be realized in a short period of time. Because of the significant difference between the FPC-established nationwide price ceiling for interstate sales, and the higher market price for unregulated-intrastate sales, producers are reluctant to sell new onshore gas supplies to the interstate market.[5] However, experience has shown that producers will sell significant quantities of gas to the interstate market on a short-term, 180-day basis, pending the completion of facilities or other events necessary to deliver gas to an unregulated intrastate buyer. Although such sales are at prices in the $1.00 to $2.00 per Mcf range – substantially above the 52-cent regulated price ceiling for new, long-term sales–these prices compare favorably with the few alternatives available to consumers dependent on the interstate gas market. Extremely limited supplies of substitute (manufactured) natural gas (SNG) and liquefied natural gas (LNG) are available at prices in the range of four to six dollars per Mcf – up to three times more expensive than the most expensive natural gas supply. Thus, unless the interstate pipelines are permitted to make 180-day emergency sales this winter to elicit additional gas supplies, there will be both enormous reductions in service *and* higher consumer costs attributable to the purchase of SNG and LNG. In this emergency situation, a procedure authorizing 180-day emergency sales at competitive prices is in the public interest.

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[5] In the past four years, interstate pipelines have been unable to acquire virtually any new gas from onshore areas, while the intrastate reserve additions have grown to an average of 8.6 Tcf per year; 29 times the total interstate additions. Statement of John N. Nassikas, Chairman, Federal Power Commission, Hearings before the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, 94th Cong., 1st Sess. 19, July 14, 1975. The interstate market is thus dependent on the offshore federal domain for substantially all of its new gas supplies. The rapidly growing level of interstate curtailments results from the fact that offshore production alone cannot meet the needs of the interstate market.

CONCLUSION

For the foregoing reasons, and those set forth in the Government's Petition, AGD respectfully requests this Court to grant the Petition for a Writ of Certiorari, and hear this case on an expedited basis.

Respectfully submitted,

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September 16, 1975

I, Frederick Moring, hereby certify that I have served three copies of the foregoing Memorandum for Associated Gas Distributors upon each of the parties to this proceeding by causing said copies to be placed in the United States mail, postage prepaid.

This 16th day of September 1975.

Frederick Moring